

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 RAYMOND A. CHATMON,

Case No. 2:19-CV-01201-KJD-EJY

5 Plaintiff,

**ORDER**

6 v.

7 ANDREW SAUL, Commissioner of Social  
8 Security,

9 Defendant.

10 This case involves judicial review of administrative action by the Commissioner of Social  
11 Security, denying Plaintiff's claim for Social Security benefits. The Court recognizes that many of  
12 these cases have a number of factors in common:

13 1. Such cases rarely, if ever, require proceedings in the nature of a trial. Instead, these  
14 cases are usually resolved by cross-motions to reverse or remand and to affirm the Commissioner's  
15 decision.

16 2. Sometimes Plaintiff submits new medical reports to the Court in support of a request  
17 for remand at such a late date in the proceedings as to cause an unnecessary and undesirable delay  
18 in the rendering of a decision by the Court.

19 3. The transcript of the evidence adduced at the administrative hearing frequently  
20 contains the words "inaudible" or "unintelligible" in some places, and the administrative record  
21 sometimes contains documents which are illegible. These parts of the administrative record may or  
22 may not relate to the question of whether the Commissioner's decision is supported by substantial  
23 evidence.

24 4. These cases are automatically assigned to the United States Magistrate Judge for  
25 preparation of a Report and Recommendation to the United States District Judge.

1                   **THEREFORE, IT IS ORDERED:**

2                   1.       Defendant shall submit an electronic courtesy copy of the administrative record,  
3 under seal, to CM/ECF within fourteen (14) days of the filing of this Order. The courtesy copy shall  
4 be filed in a searchable PDF format with each exhibit linked separately and Optical Character  
5 Recognition performed.

6                   2.       In the event Plaintiff intends to request a remand of this case on the basis of new  
7 medical evidence, Plaintiff shall, within thirty (30) days of the filing of this Order, file a motion to  
8 remand in this Court based on new evidence. The new evidence shall be attached to the motion. A  
9 copy of the motion and medical evidence shall be served on:

10                               United States Attorney  
11                               501 Las Vegas Boulevard South, Suite 1100  
                                  Las Vegas, NV 89101

12                   3.       In the event Plaintiff files a motion for remand on the basis of new evidence,  
13 Defendant shall have thirty (30) days from the date of service of such motion to file either a notice  
14 of voluntary remand of the case or points and authorities in opposition to Plaintiff's motion. If  
15 Defendant files points and authorities in opposition, Plaintiff shall have twenty (20) days from the  
16 date of service of such points and authorities to file a reply.

17                   4.       Pursuant to 42 U.S.C. § 405(g), remand for reconsideration of new evidence will not  
18 be granted unless the evidence is new material and there is a showing of good cause for failure to  
19 incorporate the evidence into the record at an earlier stage. Therefore, if Plaintiff seeks remand for  
20 consideration of new evidence, the motion shall include a statement of reasons why the new evidence  
21 was not incorporated into the record at an earlier stage.

22                   5.       In the event Plaintiff does not file a motion to remand on the basis of new medical  
23 evidence, Plaintiff shall, within thirty (30) days of this Order, file with this Court a motion for  
24 reversal and/or remand.

25                   6.       Whenever Plaintiff files a motion for reversal and/or remand, which includes issues  
26 based on the administrative record, Plaintiff's motion shall include:

1           a.       A specification of each and every condition or ailment, or combination  
2 thereof, that allegedly renders Plaintiff disabled and is allegedly supported by evidence  
3 contained in the administrative record.

4           b.       A complete summary of all medical evidence in the record that supports  
5 Plaintiff's claim of disability due to each condition or ailment specified in subparagraph 6a  
6 above, with precise references to the applicable portions of the record. This summary shall  
7 not include medical evidence unrelated to the conditions or ailments upon which Plaintiff's  
8 claim or claims of disability are based. It shall be sufficient compliance with this  
9 subparagraph if Plaintiff shall stipulate that the Administrative Law Judge fairly and  
10 accurately summarized the evidence contained in the administrative record.

11           c.       With respect to each condition or ailment specified in subparagraph 6a above,  
12 a complete but concise statement as to why the record does not contain substantial evidence  
13 to support Defendant's conclusion that Plaintiff is not disabled by each such condition or  
14 ailment, or combination thereof.

15       7.       If Defendant has not filed a notice of voluntary remand and the issues in question  
16 relate to the administrative record, Defendant, within thirty (30) days after being served with  
17 Plaintiff's motion for reversal and/or remand, shall file a cross-motion to affirm which will be  
18 considered an opposition to Plaintiff's motion. This motion shall include:

19           a.       With respect to each disabling condition or ailment specified by Plaintiff, a  
20 complete summary of all medical evidence in the record that Defendant contends constitutes  
21 substantial evidence to support the administrative determination that Plaintiff is not entitled  
22 to the benefits in question. This summary shall not include medical evidence unrelated to  
23 conditions or ailments upon which Plaintiff's claim or claims of disability are based. It shall  
24 be sufficient compliance with this subparagraph if Defendant shall stipulate that the  
25 Administrative Law Judge fairly and accurately summarized the evidence contained in the  
26 record.

27           b.       With respect to each disabling condition or ailment specified by Plaintiff, a  
28 complete summary of all testimony adduced at the administrative hearing, including the

1 Administrative Law Judge's findings, if any, concerning the credibility of witnesses, which  
2 Defendant contends constitutes substantial evidence to support the administrative  
3 determination that Plaintiff is not entitled to the benefits in question. It shall be sufficient  
4 compliance with this subparagraph if Defendant shall stipulate that the Administrative Law  
5 Judge fairly and accurately summarized the testimony adduced at the administrative hearing.

6 c. A statement as to whether there are any inaccuracies in the summaries filed  
7 by Plaintiff. If Defendant believes Plaintiff's summaries are inaccurate, Defendant shall set  
8 forth what additions or corrections are required (with appropriate references to the record) in  
9 order to make the summaries accurate.

10 d. The lay definitions of all medical terms contained in the record necessary to  
11 be understood in order to determine whether the Administrative Law Judge's decision is  
12 supported by substantial evidence.

13 8. The motions filed by Plaintiff and Defendant pursuant to paragraphs 6 and 7 of this  
14 Order, respectively, shall also contain appropriate points and authorities dealing with the specific  
15 legal issues involved in this case, rather than principles of law applicable to Social Security cases in  
16 general.

17 9. Plaintiff shall be deemed to have agreed to the accuracy of the summaries supplied  
18 by Defendant in response to subparagraphs 7a and 7b of this Order, and to all definitions of medical  
19 terms supplied by Defendant with respect to subparagraph 7d of this Order, unless within twenty  
20 (20) days after being served with Defendant's motion to affirm, Plaintiff files and serves a reply or  
21 reply brief setting forth:

22 a. In what manner the summaries are inaccurate;

23 b. What additions or corrections are required (with appropriate references to the  
24 record) in order to make the summaries accurate; and/or

25 c. Any definitions of the medical terms that Plaintiff contends are more accurate  
26 than the definitions supplied by Defendant.

10. The motions filed by both Plaintiff and Defendant shall also contain the following:

a. A statement as to whether the transcript of the administrative hearing can be adequately comprehended in spite of the fact that such transcript may contain the words “inaudible” or “unintelligible” in one or more places, and specifying each page, if any, in which testimony relating to the particular issues of this case cannot be adequately comprehended.

b. A specification of each page in the administrative record that is partially or totally illegible, and a statement as to whether each such illegible page contains information relevant to an understanding of any issue presented in this case.

11. Oral argument shall be deemed waived and the case shall stand submitted unless argument is ordered by the Court or requested, pursuant to Local Rule 78-1, by one of the parties within ten (10) days following the filing of the last document required by this Court. Even if one or both of the parties requests oral argument, the final decision as to whether oral argument is warranted remains with the Court.

12. Failure of a party to file a motion or points and authorities required by this Order may result in dismissal of the action or reversal of the decision of the Commissioner of Social Security.

IT IS SO ORDERED.

DATED: October 22, 2019

  
ELAYNA J. YOUCHAK  
UNITED STATES MAGISTRATE JUDGE